



2024 South Dakota Legislature

House Bill 1195

Introduced by: **Representative Wittman**

1 **An Act to provide authority for a court to order offenders convicted of vehicular**
 2 **homicide to pay restitution in the form of child support.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 25-7 be amended with a NEW SECTION:**

5 If a defendant is convicted of vehicular homicide pursuant to § 22-16-41 and the
 6 deceased victim of the offense was a parent or guardian of a minor child, the sentencing
 7 court may order the defendant to pay restitution in the form of child support to each of
 8 the victim's children until each child reaches age eighteen, or age nineteen if the child is
 9 a full-time student in a secondary school.

10 The court shall consider all relevant factors in determining a support amount that
 11 is reasonable and necessary for the maintenance of each child, including:

12 (1) The financial needs and resources of the child;

13 (2) The financial needs and resources of the surviving parent, or if no other parent is
 14 alive or capable of caring for the child, the guardian of the child, including the state
 15 if the state is the guardian;

16 (3) The standard of living to which the child is accustomed;

17 (4) The physical and emotional condition of the child;

18 (5) The child's educational needs;

19 (6) The child's physical and legal custody arrangements; and

20 (7) The reasonable work-related childcare expenses of the surviving parent or
 21 guardian.

22 Pursuant to § 23A-28-7, a defendant ordered to pay child support under this
 23 section shall make payments to the clerk of courts as trustee for remittance to the child's
 24 surviving parent or guardian. The clerk shall remit payment to the surviving parent or
 25 guardian within three business days of receipt by the clerk. The clerk shall deposit all
 26 payments no later than the next business day after receipt.

1 If a defendant ordered to pay child support under this section is incarcerated and
2 unable to pay the required support while incarcerated, the defendant has up to one year
3 after release from incarceration to begin payment, including entering a payment plan to
4 address any arrearage. If the defendant's child support payments are set to terminate but
5 the defendant's obligation is not paid in full, the support payments must continue until the
6 entire arrearage is paid.

7 If a civil action is brought on behalf of a child against the defendant prior to a
8 sentencing court ordering child support payments as restitution under this section, and
9 the child obtains a judgment in the civil action, the court may not order child support
10 under this section. If the sentencing court orders child support under this section and the
11 child later obtains a judgment in a civil action brought on behalf of the child, the court
12 must offset the child support order by the amount of the judgment awarded in the civil
13 action pursuant to § 23A-28-9.